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IN THE

Supreme Court of the United States

October Term, 1947.

No. 256

CLOYCE HENRY PETERS,

Petitioner,

Against

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

NORMAN L. MEYERS,
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Of Counsel.

October 3, 1947.

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In respondent's brief in opposition, it is stated (p. 24):

"We think it matters little whether petitioner's claim to immunity is founded on the Compulsory Testimony Act, as he urged in the district court and in the Circuit Court of Appeals, or on the immunity provisions of the Second War Powers Act, as he urged on petition for rehearing in the Circuit Court of Appeals, and as he urges in this Court. The meaning and effect of the statutes

> is substantially the same, and there plainly was no Congressional purpose to grant greater immunity in one than the other."

We disagree emphatically with this statement. The provisions of the Second War Powers Act immunity provision, U. S. C. A. 50 App. Section 633 (4), does not require the production of evidence, documentary or otherwise, *under oath*. In this respect, it differs from the interpretation placed by the Circuit Court of Appeals, Eighth Circuit, upon the immunity statute of the Emergency Price Control Act, 50 U. S. C. A. App. 922 (g). The statement above referred to in respondent's brief would not be objectionable, except for the strained and erroneous interpretations of the provisions of the Emergency Price Control immunity statute. If the immunity statute of the Emergency Price Control Act, 50 U. S. C. App. 922 (g) were not distorted by the addition to that Act of the provisions of Title 49, U. S. C. Section 48, then both the immunity statute of the Second War Powers Act and the Emergency Price Control Act would, in effect, be identical. However, as pointed out in the petition (Pet. 13), we do not believe that Congress, when it referred specifically to the Compulsory Testimony Act of February 11, 1893, and emphasized that Act by putting in parenthesis "U. S. C. 1934 edition, Title 49, Section 46", intended to include therein the provisions of Title 49, Section 48, which provides that the immunity provision shall only apply to a natural person who testifies or produces evidence under oath, for the reason, that the Second War Powers Act immunity statute, which was enacted by Congress less than two months after the immunity section of the Emergency Price Control Act, contained no such requirement. In other words, with

the interpretation put upon the Emergency Price Control Act immunity statute, the statement in respondent's brief above referred to is erroneous, because in the Second War Powers Act no oath is required and none can be included therein by interpretation or otherwise; whereas, under the Emergency Price Control Act immunity statute, the requirement of an oath was included by misinterpretation, by the Circuit Court of Appeals for the Eighth Circuit in its majority opinion.

It is true that the petitioner in the lower court and in the Circuit Court predicated his right to immunity upon the provisions of the Emergency Price Control Act. However, it cannot be disputed now that if he was entitled to immunity he was entitled to it under the provisions of the Second War Powers Act, and he did so urge in his petition for rehearing in the Circuit Court. The foregoing, therefore, poses the question set out in petitioner's application (p. 8 (3)):

> "Is a person who has first claimed his privilege and been compelled to produce his books and records pursuant to a subpoena entitled to the immunity provided by law, even though when asserting his immunity in Court his counsel invokes the wrong statute?"

It is the petitioner's contention that he claimed his privilege against self-incrimination, and as stated by Judge Riddick in his dissenting opinion in the Circuit Court of Appeals (Pet. p. 59):

> "Whether Peters said anything or made the statement which he claimed he made was, in the circumstances, a question of fact, never determined at the trial."

Respondent's brief (p. 13) states that the court below was able to trace only two documents to the Nelson Tire Com-

pany, being Government's Exhibits 41A and B. However, the record discloses, as shown in the petition (Pet. pp. 5 and 6), that the Government in addition thereto procured under the subpoenas Government Exhibits 46, 50, 58-A, B, C and 61-C.

The footnote on page 10 of respondent's brief reads as follows:

> "Petitioner's statement (Pet. 4) that 'the record shows conclusively that the petitioner was in fact the owner and manager and operator of both firms' is not supported by record references and is inconsistent with his claim in the district court that while he was the owner of the Nelson Tire Company, he was only the manager of the Island Manufacturing Company (R. 1861; see also, R. 1324-1325)."

We submit that the record of the case proves beyond any doubt the truth of the statement above quoted, and this was the interpretation of the evidence made by Judge Riddick of the Circuit Court in his dissent. We desire to call the Court's attention to the fact that the indictment in this case did not charge Greta O. Peters, the wife of the defendant, with conspiracy, but charged the petitioner with conspiracy, and the preamble of the indictment states that the purpose of the conspiracy was to enable petitioner to acquire a monopoly on used tires for use by Peters in his boot and reliner business, which the record discloses was the Island Manufacturing Company. To say that the petitioner was not the owner, manager and operator of the Island Manufacturing Company and the Nelson Tire Company, is in effect, saying that black is white. But, regardless of this argument on the part of respondent, the record does show that records of the Nelson Tire Company, of which petitioner was

the sole owner, were acquired by the Government under the subpoena. His personal checks payable to defendant Dokmo, defendant Lechnyr, defendant Phelps and defendant Hicks were all obtained by means of the subpoena served upon him. (Pet. pp. 5 and 6). They were all made overt acts in the indictment and were all introduced as evidence upon which the Government relied to convict him.

We respectfully submit that if the petitioner claimed his privilege against self-incrimination, as we claim he did, he was entitled to immunity, but this question was never determined by the trial court, and for this reason we respectfully suggest that the writ be granted.

Respectfully submitted,

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October 3, 1947.